

IDAHO Supreme Court

JUDICIAL/ADMINISTRATIVE NEWS

SEPTEMBER 2005

Chief Justice Schroeder Addresses Recorders & Clerks

The Idaho County Recorder and Clerks Annual Conference held recently in Nampa featured a keynote address from Chief Justice Gerald Schroeder. The Chief Justice applauded the high level of service that clerks give the courts and the public, particularly during tough times when county officials must work in an environment of stagnant or shrinking budgets but still great expectations as to what will be accomplished.

The Chief Justice described his start as a Probate Judge, thirty-six years ago, referring to it as a dinosaur court that not longer exists. In addition to probate, these courts handled juvenile, mental health, adoptions, and criminal cases, among others.

"It was a high volume court and I was the only judge. The amount of filings in probate under the old system prior to the Uniform Probate Code was enormous," according to the Chief Justice.

As a consequence of illness and other factors, Chief Justice Schroeder lost all the clerks that worked with him on probate matters, mental health, adoptions, civil and criminal proceedings. For approximately a month before that problem was solved, he had to hear cases during the day and then return at night to handle the records and filings that had accumulated during the day.

"It was a tremendous learning experience. I learned the volume, the complexity, the need for accuracy, the requirement of timeliness – the fact that people expect the system to work, not reasons it won't. The burden of financial responsibility, the personal freedom of people, and the reliability of a parental termination order or the sanctity of an adoption record all fell on me in my role as a clerk," he said.

When Chief Justice Schroeder began his judicial career many records were kept in gigantic leather bound volumes that weighed about twenty or more pounds – entries were with pen and ink and electric typewriters were state-of-the-art.

"Without the benefit of technology, clerks offices today would have to be two, three, perhaps four times as large as they currently are.

We must seize upon and exploit every new technology and valid innovation that can help us do our job better. It is a challenge," Chief Justice Schroeder acknowledged. "It is also what makes what we do exciting. The more we learn, the more we apply that learning, the more accomplished we become. Ultimately, the better we serve the public."

Chief Justice Schroeder ended his remarks to the Clerks by saying, "You hold among the most complex and significant public positions in our great state. Over the 36 years I have been in the system I have seen continued efforts to improve and move ahead. It's an outstanding example to all people in public service. Congratulations and good hunting!"

Changes in Clerks Manual & Training Committee



Kristina Glascock (L) and Janica Bisharat (R) assume new roles on Clerks Manual and Training Committee

Glascock Chairs Clerks Committee

Kristina Glascock has served on the Clerks Manual and Training Committee since 2000 and earlier this summer was asked by the Supreme Court to take over as the new Chairman of the Committee. She replaces Patty Weeks.

Ms. Glascock is the Clerk of the District Court for Twin Falls County. She was appointed to that position in July of 2003 and elected for a two-year term in 2004. From 1993 to 2003, she was the Administrative Assistant to Linda Wright, Trial Court Administrator for the Fifth District, and Office Manager for Twin Falls District Court. Before working in the Trial Court Administrator's office, Kristina was a deputy clerk in Twin Falls County for one year and Power County for

three years. In 1989, she graduated from Idaho State University as a Legal Secretary and has since attended several academic courses at the College of Southern Idaho.

The Committee, under the new Chair's direction, has taken on the task of going through each section and entering any updates.

Ms. Glascock notes, "This is an awesome task and we hope to have it completed by the end of this year. Each committee member has devoted several hours to reading and updating these sections and many hours have been spent on conference calls to implement the changes."

The committee is also planning the upcoming Distance Learning training program for all clerks and deputy clerks statewide to be held October 28, 2005, as well as planning the annual Idaho Institute for Court Management for 2006.

Bisharat to Serve as Education Coordinator

The Clerks Manual and Training Committee, formerly staffed by Sharon Burke for many years, has a new Education Coordinator. Janica Bisharat has been asked to assume those responsibilities.

Ms. Bisharat works by contract with the Idaho Administrative Office of the Courts as the Program Manager for the Court Interpreter Training and Certification Program. Janica has managed the program since its inception in 1998. She currently serves as a member of the Executive Committee of the National Consortium for State Court Interpreter Certification, as well as chair of the Consortium's Professional Issues Committee.

For three years, Janica worked as an Education Program Coordinator for the Utah Administrative Office of the Courts where she was responsible for planning and coordinating education programs for approximately 1,200 court employees. She also worked 7 1/2 years for the Idaho Administrative Office of the Courts and one year for the District Court in Bingham County.

Janica holds a Bachelor Degree in Criminal Justice Administration with an emphasis in Courts and Law from Boise State University. She is currently working towards a Master of Public Administration degree from the University of Utah.

Ms. Bisharat's responsibilities as the Education Coordinator, will be to lead, direct, and administer training/education programs and resources for Clerks of the District Court and their deputy clerks, including the Idaho Institute for Court Management (IICM); distance-learning programs; Clerks/Judges Conference and other county, district and statewide learning opportunities, developing programs and resources to meet the needs of supervisory and management personnel in the clerk's offices statewide. She will also develop policies and procedures to assist Clerks of the District Court

in the effective and efficient operation of the district courts, providing leadership to the Clerks Manual and Training Committee, facilitating development of action plans and priorities.

Many thanks to Patty Weeks and Sharon Burke for their dedicated service to the Clerks Manual and Training Committee and congratulations to their successors!

Judge Enjoys Retirement Celebration

An in-house pot luck luncheon was held recently with Twin Falls County Magistrate Judge Charles Brumbach as the guest of honor. He had requested NO public party of any kind but eventually agreed to allow a small gathering, giving his friends and family an opportunity to toast him and wish him well in his retirement. Judge Brumbach dedicated over 24 years of service to Twin Falls county and will be greatly missed. He and his wife recently moved to Rochester, Minnesota so they could be closer to his four grandchildren.



Judge Brumbach (L) receives plaques from the Supreme Court and the Fifth District from Judge John Hohnhorst (R).

Lottery Funds Aid Juvenile Courts and Counties

A breakdown of the more than \$5 million in lottery distributions to counties for Juvenile Justice Programs is available at:
<http://www.isc.idaho.gov/links/lottery%20-%20juv%20courts%2005.pdf>.

These funds are available for county Juvenile Probation and Drug and Alcohol Treatment Programs. Trial Court Administrators and Juvenile Judges are encouraged to meet with their County Commissioners on how to best utilize these funds. Lottery proceeds can remain in the Juvenile Justice Fund from year to year and do not have to be expended in this fiscal year. If you have questions or concerns about how your funds are being spent, please contact Judge John Varin at camasmaj@northrim.net.

Bar Has New President

Bannock County Magistrate Judge Rick Carnaroli has been named President of the Idaho State Bar at the recent annual meeting. Congratulations, Judge Carnaroli!



The Wasp Trap

During the Fifth District's recent Drug Court Graduation, the keynote speaker, Judge Monte Carlson shared a story with those in attendance, comparing wasp traps to addiction and describing the harm caused to those who are touched by it. Judge Carlson gave credit to his wife for the following message:

"We have a large mature pine tree in our backyard, which gives us lots of shade in the summertime. My wife and I placed a hammock in that pine tree's shade. When our weekend circumstances allow it, we take naps there. From the vantage point of the hammock, we see wasps, lots of wasps, above us in the pine tree. Evidently, something in the pine tree attracts wasps.

"Recently my wife bought some wasp traps, which are plastic devices designed to trap and kill wasps. I brought one to show you. We placed two of these traps on a couple of the pine tree's low hanging branches. My wife placed a small piece of meat in each trap. Although we really haven't noticed a decline in our backyard wasp population, within days each trap caught and killed dozens of wasps.

"One Saturday afternoon my wife was on the hammock relaxing. She watched as several wasps flew around one of the traps. Most, but not all of the wasps entered the trap. To enter the trap, a wasp smells the meat, crawls up an inverted funnel-like passageway, and then perceives its predicament. It struggles wildly to escape, but can't. Ultimately, it flies around until it expires.

"My wife was thinking of the plight of the addict. As she watched the futility of the wasp's actions, an idea came to her. Ultimately, she left the hammock and came into the house asking me to see this "drug court" message. I followed her outside to the trap, where I too began to get caught up in the symbolism.

"One of the first things I noticed was the trap was not only catching wasps, but it was also trapping bugs which were much more welcome in my back yard – like ladybugs. I thought of how the actions of an addict hurt not only himself, but also his family.

"A wasp was lured into the trap by the enticing aroma of the meat which had been placed within the trap, a symbolic entry into the world of addicting substances, with its promised "high". Not all wasps went for this bait, but many did. Those that did were trapped and doomed.

"I then took a good look at the trap. I discovered there were only two ways the wasp could escape. First, a trapped wasp could easily return to freedom by re-entering the same passageway it had used to get inside the trap, but evidently such a move was unnatural. As far as I could tell, none were escaping. But I thought, if a wasp really could escape, that wasp could help lead the others to freedom. I then thought of those wonderful recovering addicts and sponsors who help us in treating addicts.

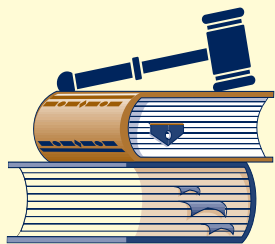
"Second, as I studied the trap, and studied the how and why of it, it seemed to me that the only real way for the wasp to regain its freedom, was if someone outside the trap (like the drug court team), would open the trap's door."

In closing, Judge Carlson said, "I am fiercely proud of you Drug Court graduates. You were in the trap, and you recognized that you were powerless over your addiction. You came to discover that you needed help from a Power greater than yourself, and you needed help from others. You did something that was quite unnatural – you made decisions, made an inventory, took steps to remove your defects, and ultimately (at least for this past year or so) made a course correction. Now keep at it. Keep clean. Carry the message and help us lead others out of the trap."

National Learning Site

The Seventh District Mental Health Court in Bonneville County has been selected as one of eight finalists for designation as a national learning site. The Council of State Governments, under a grant from the Department of Justice, is selecting five national "learning sites" for mental health court implementation. A team organized by the Council of State Governments will be visiting the court October 13-14, 2005 to meet Judge Brent Moss, key team members, and community partners and to observe a case staffing and court session.

Kudos to Judge Moss and the mental health court team for "making the cut" and for their willingness to share their work with others, not only in Idaho but around the nation. If selected, the Seventh District Mental Health Court will receive visits from others in the United States who are seeking to develop mental health courts, particularly those in a non-urban environment. In addition, the Idaho court will also receive ongoing education and consultation to strengthen their operations and enhance their effectiveness through this initiative.



New Orders & Rule Changes

For current New Orders or Rule Changes, go to <http://www.isc.idaho.gov/rulesamd.htm>

Parental Consent Bypass

The federal court issued a ruling recently forbidding the state to enforce the new 2005 version of the law requiring a minor to get parental consent for an abortion that was meant to replace the previous law on parental consent that had been struck down by the Ninth Circuit.

Petitions seeking a judicial bypass for parental consent were few, but at this time you should not be seeing any. We will keep you informed if there is any change. If you have any questions, please contact Cathy Derden at cderden@idcourts.net or 208-334-3867.

New Rules Impact Juveniles

Several new rules have been adopted by the Supreme Court involving mental health assessments of juveniles, public records, interpreters, the selection and service of administrative district judges, and the establishment of drug courts and mental health courts. A brief description of these rules follows:

In Re: Amendment of I.J.R. 51, 52 and Adopting Rule 54 - August 4, 2005 - effective August 15, 2005

Earlier this year the Legislature added a new statute, I.C. § 20-511A, to the Juvenile Corrections Act. This legislation addressed concerns that had been voiced by the magistrate judges on the Juvenile Justice Advisory Team. Too often they had seen juveniles come before them who had obvious mental health problems that were not being adequately treated. Many times these juveniles languished in detention while their cases were pending, a situation that could only aggravate their mental illness.

The new statute provides that courts hearing JCA or CPA cases can order a mental health assessment and preparation of a plan of treatment by the Department of Health and Welfare for juveniles who appear to be suffering severe emotional disturbance (SED). This can be ordered when the court has reason to believe that:

(1) the juvenile is suffering SED that impairs the juvenile's ability to comply with the orders of the court, or presents a risk to the juvenile's well-being, or the safety of the juvenile or others; and
(2) the juvenile's needs are not being met with the services thus far provided.

If the court ultimately concludes that these conditions are present, the plan of treatment becomes an order of the court, and the

Department of Health and Welfare provides the mental health treatment designated in the plan of treatment. Any residential or in-patient treatment can be ordered only after a hearing or waiver of a hearing by the juvenile and the juvenile's parents or guardians.

The new Rule 54 of the Idaho Juvenile Rules provides procedures for the implementation of the statute. The new rule includes the following provisions:

- ⚖ Defines the "interested parties" who are to receive notice of court orders and hearings.
- ⚖ Provides that the court shall set time limits for the submission of the assessment and plan of treatment, the recommendations of the screening team and additional evaluations. The time limits may be extended for good cause.
- ⚖ Allows the court to order any agency that treated or had custody of the juvenile, the Department of Health and Welfare, the Department of Juvenile Corrections, county probation or school officials to release pertinent information or records pertaining to the juvenile.
- ⚖ Sets standards for when the court shall hold a hearing on whether to order treatment.
- ⚖ Requires findings based on clear and convincing evidence before in-patient or residential treatment can be ordered.
- ⚖ Provides that statements made by the juvenile in connection with the assessment, evaluation or preparation of a plan of treatment shall not be used against the juvenile in the JCA evidentiary hearing.

The new Rule 54 provides perhaps a better road map for dealing with these cases than the statute itself and should be very helpful.

The Court has also amended Rule 51 of the IJR to provide that the Rules of Evidence do not apply to proceedings under I.C. § 20-511A, and has amended Rule 52 to provide that hearings and screening team meetings held pursuant to I.C. § 20-511A are closed to the public.

Public Records

Amendment to I.C.A.R. 32 - Disclosure - August 4, 2005, effective August 15, 2005

Some recent developments have led to reexamination of the procedures regarding sealing of court records. Rule 32 of the Idaho Court Administrative Rules has been amended to provide better guidance for the handling of such records.

Subsection (d) of Rule 32 lists several categories of court records that are exempt from public disclosure. In addition, subsection (f) allows courts to prohibit or limit disclosure of other records, based on findings "as to whether the interest in privacy or public disclosure predominates." Subsection (l) allows any interested person to make a motion to seal or unseal judicial records.

The Court has made three significant changes in these last two subsections:

- ⚖ Since subsections (f) and (l) deal with essentially the same subject, the provisions of subsection (l) have been included in subsection (f), and subsection (l) has been eliminated.
- ⚖ The terminology in subsection (f) was somewhat unclear, using the terms "prohibit," "limit" and "seal." The subsection has been amended to use the terms "seal" and "redact."
- ⚖ These terms have also been made clearer by the addition of a paragraph to subsection (f) that provides detailed instructions on how sealed and redacted records are to be handled.

Also, a sentence has been added to subsection (j) of the rule, which deals with responses to requests for records: "Efforts should be made to respond promptly to requests for records."

This is precatory language; the time limits for responding to records requests contained in subsection (j) have not been changed.

Interpreters

Amendment to I.C.A.R. 52 - Policy Declaration Relating to Court Interpreters - August 4, 2005, effective August 15, 2005

Rule 52 of the Idaho Court Administrative Rules has been amended in two respects:

- ⚖ The definition of "appointing authority" has been expanded to include "the judge's designee." Therefore, a person such as a trial court administrator designated by a judge can make the appointment. If the appointment is challenged by a party the validity of the appointment must still be determined by the court.

- ⚖ An interpreter's written oath is to be filed with the clerk of the district court. The oath then remains in effect in that county and need not be re-administered at every proceeding in which the interpreter serves.

Administrative District Judges

Adoption of I.C.A.R. 42 - Administrative Judge – Selection, Term and Duties - August 4, 2005, effective August 15, 2005 (job description available at: http://www.isc.idaho.gov/links/adj_jobd.htm)

The Court has adopted Rule 42 of the Idaho Court Administrative Rules providing for the selection, term and removal of administrative district judges. In addition, the Court has approved a job description for ADJs.

Drug Courts and Mental Health Courts

Adoption of I.C.A.R. 55 - Drug and Mental Health Courts - August 5, 2005, effective August 15, 2005

The Court has also adopted Rule 55 of the Idaho Court Administrative Rules, which details the procedures to be followed in instituting drug courts and mental health courts.

Court Assistance Services

Amendment to I.C.A.R. 53 - Adoption of Cost Recovery Fee Schedule - August 4, 2005, effective August 15, 2005

Rule 53 of the Idaho Court Administrative Rules has been amended by the inclusion of the Cost Recovery Fee Schedule in subsection (h). The fees set forth are the maximum amounts which may be charged. There is no charge for forms downloaded from court websites.



Amendments to Idaho Misdemeanor Rules

Effective September 1, 2005, there is a new bail bond schedule set out in Rule 13 of the Idaho Misdemeanor Rules, as well as changes to the limitations set out in Rule 14 for disposition of a misdemeanor citation by way of a written guilty plea. The order setting out the new schedule and amendments can be found on the Idaho Supreme Court website at [Amendments to Idaho Misdemeanor Rules](#).



Magistrate Judges Institute Planned

The annual Magistrate Judges Institute will formally begin on **Tuesday, October 25, 2005** beginning with an educational session at 4:00 p.m., dinner that evening, continuing through **Friday, October 28, 2005** – adjourning at 12:00 noon. For additional information, please contact Judge Lowell Castleton at: 208-947-7417 or lcastleton@idcourts.net.

Please also note that the **Juvenile Justice Advisory Team** will be meeting at the same location on **Monday, October 24, 2005**. In addition, we anticipate the 5 new magistrate judges who have not completed **Phase II of the New Judges Orientation** on **Monday, October 24** at 1:00 p.m.

If you have any questions regarding the Institute, you may contact Judge Lowell Castleton at: 208-947-7417 or lcastleton@idcourts.net.

In addition, there are two optional sessions available on October 25:

9:00 am – 11:30 am

Juvenile Drug Court Guidelines Implementation Session

12:30 pm – 3:30 pm

Problem Solving Courts – Advanced Operational Update

4:00 pm

Magistrate Judges Institute Opens



One-Time 1% Personnel Cost Increase

The State Controller has certified the fiscal year end balance of the General Fund, triggering the one-time personnel cost increase established by HB 395 (and presumably in HB 396).

The method for distribution of this personnel cost increase will be a one-time lump sum, effective with the October 2005 payroll.

Odds & Ends

New Pocket Guide Available

A new publication, Achieving Fairness through Bias Free Behavior: A Pocket Guide for the Courts, is available at:
http://www.ncsconline.org/WhatNew_PopLinks.html.

To access the pocket guide, scroll down the Web page to **New on CourTopics** – the pocket guide is the first item.

Juvenile Delinquency Guidelines
This publication is a benchbook of best practices to set forth the



essential elements of effective practice in juvenile delinquency cases. The national publication identifies 16 key principles for juvenile delinquency courts, as well as recommended best practices throughout the juvenile delinquency court process – from determining whether a case should in fact enter the system, to whether the youth should remain under juvenile court jurisdiction or be transferred to criminal court, and to post-disposition review of the reentry process when the youth returns to the community.

The Juvenile Delinquency Guidelines are available at:
<http://www.ncjfcj.org/content/view/411/411/>



Legislative Services Director Retires

The Idaho Legislature received notification of Director Carl Bianchi's plans to retire from the Legislative Services Office effective November 30, 2005.

Bianchi was appointed by the Legislative Council in September 1993 and tasked with consolidating into one management structure the legislature's separate nonpartisan staff offices. The resulting Legislative Services Office today provides budget and policy analysis, research and legislation preparation, legislative financial audits and computer network and information technology services to Idaho legislators.

During Mr. Bianchi's tenure, the Legislature was one of the first state entities to embrace Internet technology through an integrated, state-of-the-art wireless computer network. The Legislature's Web site, e-mail system, public terminal and audio/video streaming of the Senate and House floor sessions have enhanced citizen involvement in the legislative process, and have made legislative information and

participation available to more Idahoans in more locations around the state than at any time in Idaho's history.

Since its creation in 1998, Bianchi has been a member of the Idaho Capitol Commission. He chairs the commission's Finance Committee, which is investigating the means to restore the Idaho Capitol Building.

Prior to his 12 years with the Legislature, Bianchi served for 20 years as Administrative Director of the Courts. A graduate of Hamilton College and Duke Law School, he is a licensed attorney and has been a court-approved mediator. From 1990 to 1994, Bianchi filled a presidential appointment as a member of the board of directors of the State Justice Institute in Virginia. Among numerous professional honors received throughout his career are the National Public Service Award from the American Society for Public Administration and the Warren E. Burger Award from the National Center for State Courts for outstanding contribution to the development of court administration.



Madison County Magistrate Judge Honored

Magistrate Judge Mark Rammell was named Judge of the Year by the Idaho Wildlife Federation and the Idaho Conservation Officers Association. Judge Rammell was honored for his "ability to fairly and justly apply justice in cases of Fish and Game rule violations."

Magistrate Judge Appointed

The Fifth Judicial District Magistrates Commission appointed Roger Harris to the position of Twin Falls County Magistrate Judge to replace Honorable Charles P. Brumbach, who retired.

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Chief Justice Gerald F. Schroeder

Justice Linda Copple Trout

Justice Daniel T. Eismann

Justice Roger S. Burdick

Justice Jim Jones

We are very interested in your news and information. If you have or are aware of items that should be featured in a future edition of Judicial/Administrative News please let us know!

News items may be submitted for publication to Patricia Tobias:

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Thanks!



Note: For the most up-to-date Judicial Calendar, check the Judiciary's homepage at <http://www.isc.idaho.gov/calendar.htm>

